

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 23488-6-III
)	
Respondent,)	
)	
v.)	Division Three
)	
DENNIS LEE CAMPBELL,)	
)	
Appellant.)	UNPUBLISHED OPINION

KULIK, J.—A jury convicted Dennis L. Campbell of two counts of delivery of a controlled substance, one count of possession of a controlled substance, and one count of maintaining a drug property. Mr. Campbell contends he was deprived of his right to a unanimous verdict because the State failed to elect which alternative means of committing the crime of maintaining a drug property the State intended to prove. He also asserts the location of the criminal activity does not meet the statutory definition of a school bus stop. We conclude the State presented sufficient evidence on all alternative means, and thus, we affirm Mr. Campbell’s conviction. We also affirm the sentence enhancement because the crime was committed within 1000 feet of a school bus stop properly designated by the Wenatchee School District.

FACTS

Franklin Myers agreed to make three controlled buys of drugs as a police informant to avoid charges for possession of heroin.

Mr. Myers told police that an acquaintance of his, Kimberlee Yarbrough, was using a residence to manufacture crack cocaine. Mr. Myers then called Ms. Yarbrough seeking to buy one sixteenth of an ounce of cocaine. Ms. Yarbrough told Mr. Myers to come to a house and provided an address.

Dennis Campbell lived in the house where the drug buy was arranged. The house was located at 518 Malaga Street in Wenatchee. This residence is approximately 90 feet from a daycare and preschool facility. A Wenatchee School District employee testified there was a special education bus stop that had been designated by the Wenatchee School Board in front of the facility. There were not, however, any signs at the location indicating that it was a designated bus stop.

Law enforcement gave Mr. Myers \$60 for the controlled buy and dropped him off at the house. Mr. Myers entered Mr. Campbell's house carrying the money provided by law enforcement. Mr. Myers testified that while he and Mr. Campbell completed the drug transaction approximately four people were "freebasing" cocaine. Report of Proceedings (RP) at 73. Ms. Yarbrough also testified that it was so common for people

to use drugs in the house that in her estimation, “[t]hat’s all it was for.” RP at 155.

When he returned from the house, Mr. Myers gave police a bag of white powder that tested positive for cocaine.

Several days later, Mr. Myers was again asked to perform a controlled buy at Mr. Campbell’s house. He entered Mr. Campbell’s house and exited a short time later. When he was picked up by police, Mr. Myers once again had a package of white powder in his possession that was confirmed to be cocaine.

Based on these transactions, law enforcement secured a search warrant for Mr. Campbell’s residence. The search of Mr. Campbell’s bedroom revealed two spoons with cocaine residue. Mr. Campbell was charged with two counts of unlawful delivery of a controlled substance – cocaine, one count of unlawful possession of a controlled substance – cocaine, and one count of maintaining a drug property.

The jury was instructed that Mr. Campbell could be found guilty of maintaining a drug property in one of three ways: by maintaining the property for the purpose of (1) others using controlled substances there; (2) keeping controlled substances on the property; or (3) selling controlled substances on the property. The State made no election as to which of the three means it sought to prove.

The jury convicted Mr. Campbell of all charges. The jury also found that Mr.

Campbell made both unlawful deliveries of the cocaine within 1000 feet of a designated school bus route stop. As a result of this special finding, Mr. Campbell received a sentencing enhancement of 24 months for the two charges of delivery of a controlled substance – cocaine. Mr. Campbell received a total sentence of 44 months. This appeal timely followed.

ANALYSIS

1. Sufficiency of the evidence as to each of the means of maintaining a drug property

Mr. Campbell was convicted of maintaining a drug property pursuant to RCW 69.50.402(a)(6), which prohibits an individual from knowingly keeping a building or dwelling for purposes of (1) illegal drug use by others; (2) storing controlled substances; or (3) selling controlled substances. Here, Mr. Campbell does not challenge the sufficiency of the State’s evidence as to the storage or sale of controlled substances on his property. Instead, he challenges the sufficiency of the State’s evidence to establish the first means of committing the crime of maintaining a drug property, that the property was kept for the purpose of allowing other people to use drugs there.

The Washington constitution grants criminal defendants the right to an expressly unanimous verdict. *State v. Ortega-Martinez*, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). This right to a unanimous verdict may also guarantee the right to jury unanimity as to “the

means by which the defendant is found to have committed the crime.” *Id.*

The test for whether unanimity is required is whether there is sufficient evidence to support each of the alternative means presented to the jury. *Id.* If there is sufficient evidence to support each of the alternative means, unanimity as to the specific means by which the defendant committed the crime is unnecessary. *Id.* at 707-08. However, if there is insufficient evidence to present a jury question as to whether the defendant committed the crime by any one of the alternative means, then the conviction should be reversed and the case remanded for retrial. *Id.* at 708.

The test for sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence are drawn in favor of the State and are interpreted most strongly against the defendant. *Id.* “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.*

There was sufficient evidence at trial from which a rational trier of fact could find that Mr. Campbell’s house was maintained for the purpose of illegal drug use by others. Mr. Myers testified that there were several people freebasing cocaine at the residence

during his first controlled buy at the Campbell house. Ms. Yarbrough testified that drug use by others at the house was so common that it was the main purpose of Mr. Campbell's house. Taken in the light most favorable to the State, this evidence is sufficient to support the inference that Mr. Campbell's house was kept for the purpose of illegal drug use by others.

2. Classification of the bus stop

Mr. Campbell also challenges the trial court's imposition of a school zone sentencing enhancement. He asserts that the trial court improperly classified the day care facility near his house as a "school bus route stop" as defined by RCW 69.50.435. We disagree.

"Statutory interpretation requires courts to give effect to the legislature's intent and purpose in passing a law." *State v. Cooper*, 156 Wn.2d 475, 479, 128 P.3d 1234 (2006). This court primarily determines legislative intent from the statutory language. *See, e.g., Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). When there is no ambiguity in the language of the statute, this court applies the statute as written and does not engage in any judicial construction. *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000).

Mr. Campbell's sentencing enhancement was authorized by RCW 69.50.435. This provision allows a trial court to impose additional jail time for certain controlled

substances violations that occur within 1000 feet of a school bus route stop designated by the school district. RCW 69.50.435(a)(3). Nothing in the statute indicates a designated school bus stop must be located at a school. The plain language of the statute requires only that a school bus stop must be officially designated as a school bus stop by the school board.

Here, testimony established that the daycare and preschool facility was officially designated as a school bus stop by the Wenatchee School District. This is all that is required under the plain language of RCW 69.50.435(a)(3). As such, the trial court committed no error in applying sentence enhancements in this case.

This interpretation is also supported by the legislative purpose in enacting the sentencing enhancement statute. “The obvious purpose of the school zone provision is to eradicate drug trafficking from places in which children congregate, thereby preventing the introduction of drug use to school children.” *State v. Byrd*, 83 Wn. App. 509, 514, 922 P.2d 168 (1996). The school bus stop in this case was at a daycare facility that was also designated as a special education bus stop. Given the extreme youth and special vulnerabilities of these children, it is consistent both with the language and with the intent of RCW 69.50.435(a)(3) to apply the special sentencing enhancements here.

Affirmed.

No. 23488-6-III
St. v. Campbell

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Schultheis, A.C.J.

Brown, J.